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August 28, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC. 20554

Via Messenger

DOCKET FILE COPY ORIGINAL

Re: ITV, Inc. and IVDS Affiliates, LC
WT Docket No. 95-47
Opposition to Petitions for Reconsideration

Dear Mr. Caton:

Transmitted herewith on behalf of ITV, Inc. and IVDS Affiliates, LC is an original and four (4) copies of their Opposition to Petitions for Reconsideration filed with respect to the above-captioned proceeding.

Please contact this law firm if you have any questions with respect to this matter.

Respectfully submitted,



William J. Franklin
Attorney for ITV, Inc. and IVDS
Affiliates, LC

Encls.

cc: ITV, Inc. and IVDS Affiliates, LC
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AUG 28 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Part 95 of the)
Commission's Rules to allow) WT Docket No. 95-47
Interactive Video and Data) RM-8476
Service licensees to provide)
Mobile Service to Subscribers)

To: The Commission

OPPOSITION TO
PETITIONS FOR RECONSIDERATION

ITV, Inc. ("ITV") and IVDS Affiliates, LLC ("IALC"), by their attorney and pursuant to Section 1.429(f) of the Commission's Rules, hereby opposes the Petitions for Reconsideration filed with respect to the Commission's Report and Order in the above-captioned proceeding.^{1/} Petitions identified in the notice were filed by Euphemia Banas, et al. and by the National Association of Broadcasting ("NAB").^{2/} As set forth herein, ITV and IALC generally support the Banas Petition and oppose the NAB Petition.

DESCRIPTION OF ITV AND IALC

ITV and IALC are commonly owned. ITV is an IVDS licensee for the San Francisco MSA. Accordingly, ITV has experience in

^{1/} 11 FCC Rcd 6610 ("R&O"). Public Notice of the Petitions appeared in the Federal Register on August 13, 1996 (61 FR 42021), and this Opposition is timely filed pursuant to that Notice.

^{2/} ITV and IALC also filed a timely letter-petition for clarification of the R&O on July 1, 1996, which letter has not yet appeared on Public Notice.

assessing the technical and economic realities of the IVDS business. As a result of that assessment, ITV formed IALC to develop a product line of IVDS equipment for ITV's use and for the use of other IVDS licensees. That equipment, which is now type-accepted and operational for an in-market field trial, uses the IVDS spectrum to distribute business and commercial data to subscribers.

Accordingly, ITV and IALC possess a demonstrated level of expertise in the design and operation of IVDS systems. Thus, their comments should receive enhanced consideration from the Commission.

OVERVIEW OF THE R&O

The R&O modified the Commission's rules to permit licensees in the Interactive Video and Data Service ("IVDS") to provide mobile service to subscribers.

As part of this decision, the Commission limited the maximum Effective Radiated Power of IVDS Response Transmitter Units ("RTUs") to one-hundred milliwatts mean power on a nationwide basis.^{3/} Banas opposes this limitation, and argues that the Commission could achieve the same level of interference protection for TV Channel 13 by requiring filters or dynamic and/or automatic power controls. Banas also correctly observes that Section 95.861(e) provides a further degree of interference protection for broadcasters by making IVDS licensees responsible

^{3/} R&O, supra, 11 FCC Rcd at 6617.

for their RTUs' interference.^{4/} While the requested relief is not required for their IVDS equipment, ITV and IALC generally support the Banas petition.

The R&O also made a number of other rule changes in the course of implementing mobile IVDS. First, obviously, it amended the rules to permit mobile IVDS.^{5/} Second, it eliminated the "duty cycle" requirement for both fixed IVDS operations outside the TV Channel 13 Grade B contour, and for mobile IVDS usage where the IVDS licensee's entire service area doesn't overlap the Channel 13 contour.^{6/} Third, it permitted both indirect RTU-to-RTU communications and direct CTS-to-CTS (fixed point-to-point) communications, but prohibited direct RTU-to-RTU communications.^{7/} Finally, it prohibited interconnection between IVDS systems and the Public Switched Network ("PSN").^{8/}

^{4/} See id. at 6619 & n.59.

^{5/} Id. at 6612-15.

^{6/} Id. at 6617-19. Section 95.863 of the Rules states a maximum usage rate (the "duty cycle") of 5 seconds per hour, or one percent within any 100 millisecond period for each RTU. After consideration of the broadcasters' concerns for channel-13 interference, the R&O carefully created the above-described exceptions to this rule.

^{7/} Id. at 6619-21.

^{8/} Id. at 6621-22. The ITV/IALC letter sought clarification of the scope of this prohibition. Specifically, ITV/IALC felt that the Commission's prohibition on interconnection of IVDS systems with the PSN should be applied consistently with the Commission's definition of "interconnection with the PSN" for the purposes of categorizing wireless mobile licensees as either Commercial Mobile Radio Service ("CMRS") or Private Mobile Radio Service ("PMRS") providers. See Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1434-36 (1994) (GN Docket No. 93-252) (continued...)

Reading the R&O as a whole, it is clear that the Commission successfully balanced the level of interference protection to be accorded TV channel 13 against the need to encourage development of the IVDS spectrum.

**THE COMMISSION SHOULD REJECT
NAB'S PETITION FOR RECONSIDERATION**

As a preliminary matter, ITV and IALC share NAB's desire to keep TV channel 13 free from harmful interference from IVDS systems. However, the issue here is not the goal to be achieved, but the methods used to achieve that goal. The NAB Petition reads as if civilization as we know it will end unless the rule changes adopted by the R&O are repealed. This position is both overstated,^{2/} and in part, appears to reflect a hysterical misunderstanding of the Commission's decision.

The Measurement of Mean versus Peak Power. NAB (Petition at 3) raises the specter of "72 watt peak RTU transmitters and 14,400 Watt peak CTS transmitters...." NAB bases this claim on

^{2/} (...continued)
(Second Report and Order). Specifically, any use of the PSN permitted for a PMRS licensee's internal control purposes should also be permitted for an IVDS licensee's internal control purposes.

^{2/} Footnote 9 to NAB's Petition apparently seeks reconsideration of a separate Order (DA 96-925, released June 21, 1996) in which the Wireless Telecommunications Bureau interpreted the notice provisions of Section 95.861(c) in response to a petition filed by ITV and IALC. NAB's request is untimely, and the Commission lacks jurisdiction to revisit that Order in this proceeding. Further, the NAB assumption that only direct mail notification to households of the initiation of IVDS service can be an effective means of notification is both baseless and incorrect. Nearly all junk mail is quickly trashed, and not read or remembered.

its reading of the R&O, which it feels permitted the use of mean (instead of peak) power measurements for all IVDS equipment, and on its assumption of "typical IVDS operations...." NAB is doubly incorrect.

First, a careful reading of the R&O shows that the Commission only adopted a mean power limit for measuring the 100-milliwatt limit for mobile RTUs.^{10/} There is no suggestion in either the decision or the revised rules that any other power limit is based on mean power, as opposed to peak power.

Second, NAB's specification of "typical IVDS operation" is baseless. The IVDS industry is in its infancy, and to date there virtually no commercial IVDS operations. Thus, unlike broadcasting, there are no "typical" IVDS operations from which reasonable assumptions can be based.

The Duty Cycle Limitation. NAB (Petition at 6-8) seeks to expand the IVDS duty cycle requirement to include all fixed RTU and CTS locations over 10 miles outside the Channel 13 grade B contours, and to include all mobile RTU operations, wherever located. NAB's request is needlessly overinclusive.

For one thing, the operation of a mobile RTU (which, after all, has a 100-milliwatt power limit) away from the Channel 13 contour can cause no interference to Channel 13. Similarly, the operation of any IVDS equipment will not affect the majority of

^{10/} See R&O, supra, 11 FCC Rcd at 6617 (¶18) and revised Section 95.855(a).

Americans who receive their television via cable or satellite, and not over the air.^{11/}

In their comments, ITV and IALC supplied an expert engineering analysis from Signal Science, Inc. ("SSI"), the engineering firm that designed their IVDS equipment. Attachment A to the ITV/IALC Comments is SSI's Engineering Comments addressing these concerns. In its analysis, SSI concluded that valuable IVDS spectrum would be wasted if the Commission does not raise the maximum duty cycle in parallel with lowering the maximum ERP.

SSI concluded further that raising the duty cycle while lowering ERP will not increase the potential for interference to TV Channel 13. The specific duty cycle suggested by SSI's analysis maintains the current power density of 20 watts per 1% of 100 milliseconds, i.e., a power density equivalent to the continuous transmission of 200 milliwatts.^{12/} Thus, if the Commission limits all RTUs to a maximum ERP of 100 milliwatts,

^{11/} Indeed, the "fringe" television viewer that NAB worries about (Petition at 7) is the classic cable subscriber, less likely to rely on over-the-air TV reception.

^{12/} If the Commission maintains the 20 watts power limitation for RTUs, then the duty cycle should be established by the following table:

<u>Maximum ERP</u>	<u>Duty Cycle Limitation Usage per 100 milliseconds</u>	<u>Resulting Average Power (watts)</u>
20 watts	1%	0.2
5	4%	0.2
2	10%	0.2
0.5	40%	0.2
0.2 (or less)	100%	0.2 (or less)

then no duty cycle limitation is required to provide greater than current protection to TV Channel 13.

Accordingly, it is clear that the Commission balanced the interests of all parties in revising the duty-cycle limits as it did.

The Nature of IVDS Service. NAB also requests (Petition at 8-9) that the Commission maintain the basic nature of IVDS service. To this end, NAB worries (at 9) that "IVDS licensees [might] employ the rule changes adopted in this proceeding to create a communications service wholly unintended by the Commission...." NAB's concerns are short-sighted and essentially self-destructive to the American economy.

In other radio services, the Commission is rapidly abandoning the notion that it should artificially limit the types of communications which its licensees may provide. Rather than have the uses of spectrum be defined by regulation, the Commission has found that the public interest is well served by letting the marketplace develop efficient uses for spectrum.

With the continuing development of the information highway, the Commission cannot accurately predict the continuing best use for any block of spectrum. The Commission should apply this "marketplace" policy to IVDS, and permit the broadest possible use of mobile IVDS communications which do not produce harmful electrical interference to others.

CONCLUSION

Accordingly, ITV, Inc. respectfully requests that the Commission deny the Petition for Reconsideration of the National Association of Broadcasters to the extent set forth herein.

Respectfully Submitted,

**ITV, INC.
IVDS AFFILIATES, LLC**

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent by U.S. mail, first-class postage prepaid, this 28th day of August, 1996 to:

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/s/ William J. Franklin